```
Leon Simson, OSB No. 753429
     (Lead Attorney)
 2
        Direct Dial: (503) 802-2067
        Facsimile:
                   (503) 972-3767
 3
        E-Mail:
                    leon.simson@tonkon.com
     David S. Aman. OSB No. 962106
 4
        Direct Dial: (503) 802-2053
        Facsimile: (503) 972-3753
 5
        E-Mail:
                    david.aman@tonkon.com
     Haley B. Bjerk, OSB No. 062760
 6
        Direct Dial: (503) 802-5765
        Facsimile: (503) 972-7465
 7
                    haley.bjerk@tonkon.com
        E-Mail:
     TONKON TORP LLP
 8
     1600 Pioneer Tower
     888 S.W. Fifth Avenue
 9
     Portland, OR 97204
10
            Attorneys for Chapter 11 Trustee
11
                      IN THE UNITED STATES BANKRUPTCY COURT
12
13
                              FOR THE DISTRICT OF OREGON
14
      In re
                                                   Case No. 08-37031-rld11
15
      Summit Accommodators, Inc., dba Summit
      1031 Exchange,
16
                          Debtor.
17
      KEVIN D. PADRICK, CHAPTER 11
                                                   Adv. Pro. No. -09-3086-rld
18
      TRUSTEE,
19
                                                   COMPLAINT
                                Plaintiff,
20
                                                   (Breach of Fiduciary Duty; Conversion;
            v.
                                                   Professional Negligence; Civil
                                                   Conspiracy; Aiding and Abetting;
21
      MARK A. NEUMAN; BRIAN STEVENS;
                                                   Implied in Law Contract; Constructive
      LANE D. LYONS; and TIMOTHY
22
                                                   Trust; Accounting; Injunctive Relief)
      LARKIN,
23
                                Defendants.
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1	Kevin D. Padrick, Chapter 11 Trustee, alleges as follows:
2	<u>PARTIES</u>
3	1. Kevin D. Padrick is the duly-appointed Chapter 11 Trustee ("Trustee")
4	in the above-captioned bankruptcy proceeding.
5	2. Summit Accommodators, Inc. is the Debtor ("Debtor") in the above-
6	captioned bankruptcy proceeding.
7	3. Defendant Lane D. Lyons ("Lyons") is an individual residing in
8	Oregon and at all material times was an officer, agent and shareholder of Debtor.
9	4. Defendant Timothy Larkin ("Larkin") is an individual residing in
10	Oregon and at all material times was an officer, agent and shareholder of Debtor.
11	5. Defendant Mark Neuman ("Neuman") is an individual residing in
12	Oregon and at all material times was an officer, agent and shareholder of Debtor. Defendant
13	Neuman was also a certified public accountant, licensed in the State of Oregon.
14	6. Defendant Brian Stevens ("Stevens") is an individual residing in
15	Oregon and at all material times was an officer, agent and shareholder of Debtor. Defendant
16	Stevens was also a certified public accountant, licensed in the State of Oregon.
17	7. Inland Capital Corp. ("Inland") is an Oregon corporation, which at all
18	material times was owned and controlled by the Defendants.
19	8. Three Sisters Development Co., Inc. ("Three Sisters") is an Oregon
20	corporation, which at all material times was owned and controlled by the Defendants.
21	JURISDICTION AND VENUE
22	9. Jurisdiction in this adversary proceeding arises pursuant to 28 U.S.C. §
23	1334(b) and 28 U.S.C. § 157(b).
24	10. Venue is proper in this District pursuant to 28 U.S.C. § 1409(a). This
25	is a core proceeding under 28 U.S.C. § 157(b)(2).
26	* * * *

1	GENERAL ALLEGATIONS
2	11. At all material times, Debtor was in the business of facilitating "1031
3	exchanges," transactions in which taxpayers are able to defer capital gains taxes by
4	exchanging like-kind properties. As a necessary part of many 1031 exchanges, Debtor's
5	clients (that is, the taxpayers using the Debtor's exchange services) were required to deposit
6	funds or authorize the deposit of funds ("Exchange Funds") into accounts controlled by
7	Debtor. The Debtor agreed to hold the Exchange Funds for the benefit of Debtor's clients.
8	12. Some or all of the Defendants improperly transferred and/or loaned
9	millions of dollars in Exchange Funds to Debtor's affiliate, Inland, for the personal benefit
10	and use of some or all of the Defendants. Some or all of the Defendants further caused
11	Inland to transfer and/or loan funds from Inland to other related entities and persons for the
12	personal benefit or use of some or all of the Defendants.
13	13. As a result of these improper transfers and/or loans, Debtor is now
14	unable to return Exchange Funds to certain of Debtor's clients ("Exchange Creditors"), in an
15	amount exceeding \$13 million. In some cases, Exchange Creditors were also unable to
16	complete their 1031 exchanges, causing them to lose the tax benefit of the 1031 exchange.
17	14. Some or all of the Defendants also continued to induce Exchange
18	Creditors to deposit funds into accounts controlled by Debtor, during a time period in which
19	the exchange account balances were insufficient to cover the amounts owing on the current
20	1031 exchanges that Debtor was handling. As a result, money received from new Exchange
21	Creditors, during this time, was being used to fund other 1031 exchanges.
22	FIRST CLAIM FOR RELIEF
23	(Breach of Fiduciary Duty Owing to Exchange Creditors - Against All Defendants)
24	15. Trustee realleges all preceding paragraphs.
25	16. Defendants owe and owed fiduciary duties to the Exchange Creditors,
26	including the duties of undivided loyalty, honesty and due care.

17. Some or all of the Defendants breached their fiduciary duties to the	е
Exchange Creditors by using and diverting the Exchange Funds for the personal benefit of	of
some or all of the Defendants, including by transferring and/or lending the Exchange Fun	ıds
to Inland and by causing Inland to transfer and/or loan money to some or all of the	
Defendants and other related entities and persons. Any Defendants that did not breach the	ıe
fiduciary duties they owe and owed to the Exchange Creditors in the manner described in	ı the
preceding sentence, breached their fiduciary duties to the Exchange Creditors by failing t	.0
exercise due care to discover and discontinue the diversion of Exchange Funds for the	
personal benefit of some or all of the Defendants.	
18. The Defendants' breaches of their fiduciary duties caused substant	ial
damage to the Exchange Creditors, in an amount exceeding \$13 million.	
SECOND CLAIM FOR RELIEF	
SECOND CLAIM FOR RELIEF (Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)	
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)	
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.	ıesty
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.  20. Defendants owed fiduciary duties to Debtor in their capacity as	ıesty
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.  20. Defendants owed fiduciary duties to Debtor in their capacity as  Debtor's officers, employees and/or agents, including the duties of undivided loyalty, hore	·
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.  20. Defendants owed fiduciary duties to Debtor in their capacity as  Debtor's officers, employees and/or agents, including the duties of undivided loyalty, hor and due care.	ebtor
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(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.  20. Defendants owed fiduciary duties to Debtor in their capacity as  Debtor's officers, employees and/or agents, including the duties of undivided loyalty, hor and due care.  21. Some or all of the Defendants breached their fiduciary duties to Debtor using and/or diverting funds belonging to Debtor and/or Debtor's clients for the person	ebtor nal ry
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.  20. Defendants owed fiduciary duties to Debtor in their capacity as  Debtor's officers, employees and/or agents, including the duties of undivided loyalty, hor and due care.  21. Some or all of the Defendants breached their fiduciary duties to Deby using and/or diverting funds belonging to Debtor and/or Debtor's clients for the person benefit of some or all of the Defendants. Any Defendants that did not breach the fiduciar	ebtor nal ry their
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.  20. Defendants owed fiduciary duties to Debtor in their capacity as  Debtor's officers, employees and/or agents, including the duties of undivided loyalty, hor and due care.  21. Some or all of the Defendants breached their fiduciary duties to Deby using and/or diverting funds belonging to Debtor and/or Debtor's clients for the person benefit of some or all of the Defendants. Any Defendants that did not breach the fiduciar duties they owed to Debtor in the manner described in the preceding sentence, breached to	ebtor nal ry their the
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.  20. Defendants owed fiduciary duties to Debtor in their capacity as Debtor's officers, employees and/or agents, including the duties of undivided loyalty, hor and due care.  21. Some or all of the Defendants breached their fiduciary duties to Deby using and/or diverting funds belonging to Debtor and/or Debtor's clients for the person benefit of some or all of the Defendants. Any Defendants that did not breach the fiduciar duties they owed to Debtor in the manner described in the preceding sentence, breached to fiduciary duties to the Debtor by failing to exercise due care to discover and discontinue to	ebtor nal ry their the
(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)  19. Trustee realleges all preceding paragraphs.  20. Defendants owed fiduciary duties to Debtor in their capacity as Debtor's officers, employees and/or agents, including the duties of undivided loyalty, hor and due care.  21. Some or all of the Defendants breached their fiduciary duties to Deby using and/or diverting funds belonging to Debtor and/or Debtor's clients for the person benefit of some or all of the Defendants. Any Defendants that did not breach the fiduciar duties they owed to Debtor in the manner described in the preceding sentence, breached to fiduciary duties to the Debtor by failing to exercise due care to discover and discontinue diversion of funds belonging to Debtor or Debtor's clients for the personal benefit of som	ebtor nal ry their the

1	THIRD CLAIM FOR RELIEF
2	(Conversion - Against All Defendants)
3	23. Trustee realleges all preceding paragraphs.
4	24. Defendants caused or otherwise enabled or allowed the transfer and/or
5	loan of the Exchange Funds and/or other funds from Debtor to Inland for the personal benefit
6	or use of some or all the Defendants. Defendants thus converted the Exchange Funds and/or
7	other funds.
8	25. The Exchange Creditors and Debtor have been damaged by
9	Defendants' conversion of the Exchange Funds and/or other funds, in an amount exceeding
10	\$13 million.
11	FOURTH CLAIM FOR RELIEF
12	(Professional Negligence – Against All Defendants)
13	26. Trustee realleges all preceding paragraphs.
14	27. Defendants (including Defendants Stevens and Neuman, both of
15	whom were licensed accountants) were engaged in providing financial and/or tax planning
16	advice to the Exchange Creditors. As such, Defendants owed a duty to the Exchange
17	Creditors to exercise due care and to advise the Exchange Creditors in a manner that was
18	financially sound and prudent.
19	28. Defendants breached that duty by advising the Exchange Creditors to
20	place funds in accounts that Defendants knew or should have known were unsafe and subject
21	to an unreasonable risk of loss.
22	29. Defendants' breaches of the aforementioned duty caused damage to the
23	Exchange Creditors, in an amount exceeding \$13 million.
24	FIFTH CLAIM FOR RELIEF
25	(Civil Conspiracy/Aiding and Abetting - Against All Defendants)
26	30. Trustee realleges all preceding paragraphs.

1	31. Each of the Defendants knew or had reason to know that the other
2	Defendants' conduct as alleged above was tortious.
3	32. Defendants' tortious conduct was pursuant to a plan or agreement
4	among all of them. Moreover, each of the Defendants encouraged and substantially assisted
5	the other Defendants in their tortious conduct.
6	33. Defendants are jointly and severally liable for all other Defendants'
7	tortious conduct, in an amount exceeding \$13 million.
8	SIXTH CLAIM FOR RELIEF
9	(Implied-in-Law Contract with Exchange Creditors – Against All Defendants)
10	34. Trustee realleges all preceding paragraphs.
11	35. The Exchange Creditors conferred a benefit on the Defendants, in the
12	form of depositing the Exchange Funds in accounts controlled by Debtor that were ultimate
13	transferred and/or loaned for the personal benefit or use of some or all of the Defendants.
14	36. Defendants were aware of the benefit conferred on them by the
15	Exchange Creditors.
16	37. It would be unjust to allow Defendants to retain the benefit conferred
17	on them by the Exchange Creditors.
18	SEVENTH CLAIM FOR RELIEF
19	(Implied-in-Law Contract with Debtor – Against All Defendants)
20	38. Trustee realleges all preceding paragraphs.
21	39. The Debtor conferred a benefit on the Defendants, in the form of the
22	transfer and/or loan of funds to Inland that were ultimately transferred and/or loaned for the
23	personal benefit or use of some or all of the Defendants.
24	40. Defendants were aware of the benefit conferred on them by the
25	Debtor.
26	* * * * *

1	41. It would be unjust to allow Defendants to retain the benefit conferred
2	on them by Debtor.
3	EIGHTH CLAIM FOR RELIEF
4	(Constructive Trust/Accounting – Against All Defendants)
5	42. Trustee realleges all preceding paragraphs.
6	43. Trustee is entitled to a declaration that the Defendants hold the
7	Exchange Funds, as well as any other money and/or assets held or controlled by the
8	Defendants, in constructive trust for the benefit of the Exchange Creditors and Debtor.
9	44. Trustee is also entitled to an order temporarily, preliminarily and
10	permanently enjoining Defendants from transferring or otherwise using Exchange Funds and
11	any other money or assets in Defendants' possession or control, and for the remedy of
12	prejudgment attachment.
13	45. Trustee is further entitled to an accounting from Defendants of all
14	transactions involving, using or traceable to any Exchange Funds or other funds from Debtor
15	WHEREFORE, Trustee prays for judgment against the Defendants as
16	follows:
17	A. Finding in favor of Trustee on all of the claims for relief;
18	B. Awarding damages against the Defendants in an amount exceeding
19	\$13 million;
20	C. Declaring that Defendants hold the Exchange Funds, as well as any
21	other money and/or assets held or controlled by the Defendants, in constructive trust for the
22	benefit of the Exchange Creditors and Debtor;
23	D. Requiring Defendants to provide an accounting of all transactions
24	involving, using or traceable to any Exchange Funds or any other funds diverted from
25	Debtor;
26	* * * * *

1	E. Temporarily, preliminarily and permanently enjoining Defendants
2	from transferring or otherwise using Exchange Funds and other money or assets in
3	Defendants' possession or control, and ordering the remedy of prejudgment attachment;
4	F. Awarding costs and disbursements to the Trustee; and,
5	G. Granting such other and further relief as the Court deems just and/or
6	equitable.
7	DATED this 13th day of March, 2009.
8	TONKON TORP LLP
9	
10	By /s/ Leon Simson Leon Simson, OSB No. 753429 (Lead Attorney)
11	David S. Aman, OSB No. 962106 Haley B. Bjerk, OSB No. 062760
12	888 S.W. Fifth Avenue, Suite 1600 Portland, OR 97204-2099
13	Telephone: 503-221-1440 Facsimile: 503-274-8779
14	E-mail: leon.simson@tonkon.com david.aman@tonkon.com
15	haley.bjerk@tonkon.com Attorneys for Chapter 11 Trustee
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